IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITR No.42 of 1989
Date of decision:14.11.2006

M/s. V.K.Ratti Village Malpur Arkan Tehsil Nawan Shahr District Jalandhar

....Petitioner

versus

The Commissioner of Income Tax, Patiala

....Respondent

CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL
HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. Survir Sehgal, Advocate, for the revenue.
Dr. N.L.Sharda, Advocate, for the respondent.

JUDGMENT:

Following questions of law have been referred for the opinion of this Court by the Income Tax Appellate Tribunal, Chandigarh Bench, Chandigarh (for short, 'the Tribunal), arising out of its order dated 27.6.1985 in ITA No.823 of 1983, for the assessment year 1980-81:-

"1. Whether the Tribunal was right in law in rejecting the claim of the assessee to be assessee in the status of non-resident by holding that the assessee was not on 'vacation' in India though he was rendering service out of India before and after his stay in India during the relevant previous year?

2. Whether the Tribunal was right in law in rejecting the claim of the assessee that the assessment framed was bad in law as it was made in contravention of the provisions of Section 5(1)(a) and 5(1)(b) of the Income Tax Act, 1961?"

The assessee was employed at Hong Kong from 24.10.1978 to 15.7.1979 under service agreement dated 24.10.1978 for nine months. The contract was terminated on 15.7.1979 and the assessee came to India for 85 days from July 1979 to October 1979. He then joined service in Jordon from 1.11.1979 to 28.2.1980.

The question raised by the assessee was that he being non-resident during the accounting period ending 31.3.1980 in terms of section 6 (1)(c) of the Income Tax Act, 1961 (for short, 'the Act') deserved to be assessed accordingly. The Assessing officer rejected the claim of the assessee and held that for claiming the status of non-resident, a person has to be in India for 90 days or more in India on leave or vacation if he renders services outside India. The assessee was in India for less than 90 days and was not on leave or vacation, as his services had been terminated. During the period the assessee was in India he was not in employment in any foreign country. This view was upheld by the CIT(A) and the Tribunal. Relevant provision applicable to the present case is as under:-

> "6. For purposes of this Act:-
>
> (1) An individual is said to be resident in India in any previous year, if he...
>
> xxxx xxxxx xxxxx
>
> (c) having within the four years preceding that year been in India for a period or periods amounting in all to three hundred and sixty-five days or more, is in India for a period or periods amounting in all to sixty-days or more in that year."
>
> Explanation: In the case of an individual, being a citizen of India, who is rendering service outside India, and who is or has been in India on leave or vacation in the previous year, the provisions of sub clauses (b) and (c) shall apply in relation to that year as if for the words 'thirty days' and 'sixty days', respectively occurring in the said sub-clauses, the words 'ninety days' had been substituted."

A perusal of the above provision shows that if a person is in India for a period exceeding 60 days, he falls in the category of "resident".

The explanation relaxes this provision to 90 days for persons who are in service and on leave or vacation. The case of the petitioner does not fall in the explanation providing extended period of stay for exclusion from the category of resident. The petitioner was, thus, resident and could not claim to be non-resident.

Section 2(30) of the Act defines “non-resident” to mean a person who is not a resident and for purposes of Sections 92, 93 and 168 of the Act, includes a person who is not ordinarily resident within the meaning of Section 6(6) of the Act. Section 6(6) of the Act provides that person is not ordinarily resident if he falls in one of the categories specified therein. Section 6(1) lays down when a person is “resident”.

Case of the petitioner falls under section 6(1)(c) of the Act and he has to be treated as resident.

In view of the above, the question referred is answered against the assessee and in favour of the revenue.

Reference is disposed of accordingly.

(Adarsh Kumar Goel)
Judge

November 14, 2006
'gs'

(Rajesh Bindal)
Judge